

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Michael W. Messer

MDL No. 2:15-md-02641- DGC

Plaintiff,

V.

C.R. Bard, Inc. and Bard Peripheral
Vascular, Inc.

Defendants.

This Document Relates to Case No: 2:16-cv-03691-DGC

**MOTION TO SUBSTITUTE PARTY PLAINTIFF AND FOR LEAVE TO
AMEND SHORT FORM COMPLAINT**

Counsel, pursuant to Rule 25 of the Federal Rules of Civil Procedure, moves this Court for an Order substituting Anthony Messer on behalf of his deceased brother, Michael W. Messer.

1. Michael W. Messer filed a products liability lawsuit against the Defendants on October 25, 2016 in the District of Arizona.
2. On September 20, 2017, Plaintiff filed and served a Notice of Suggestion of Death (Doc. No. 7735).
3. Anthony Messer, the surviving brother of Michael W. Messer, is the proper party to substitute for Plaintiff-decedent Michael W. Messer and has proper capacity to move forward with the surviving products liability lawsuit on his behalf, pursuant to Fed. R. Civ. P. 25 (a)(1). "If a party dies and the claim is not extinguished, the Court may order substitution of the proper party. A

motion for substitution may be made by any party or by the decedent's successor or representative."

4. Anthony Messer further seeks leave to file the attached amended short form complaint to substitute himself as Plaintiff on behalf of Plaintiff- decedent Michel W. Messer and to add survival action claims (see Amended Short Form Complaint, attached hereto as Exhibit 1).
5. Based on the foregoing, Anthony Messer requests that this Court grant his request for substitution as Plaintiff in this action and for leave to file an Amended Short Form Complaint. (see Proposed Order, attached hereto as Exhibit 2).

Dated: September 29, 2017

BY PLAINTIFFS' ATTORNEYS,

By: /S/ Julie Ferraro
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2017, I electronically transmitted this document by using the CM/ECF System for filing and transmittal and a copy of the foregoing was served electronically and notice of service of this document will be sent to all parties by operation of the Court's electronic filing system.

/S/ Julie Ferraro

